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SENATE

EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION
REFERENCES COMMITTEE

Reference: Small business employment

THURSDAY, 17 OCTOBER 2002

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SENATE
EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION
REFERENCES COMMITTEE

Thursday, 17 October 2002

Members: Senator George Campbell (*Chair*), Senator Tierney (*Deputy Chair*), Senators Barnett, Carr, Crossin and Stott Despoja

Substitute members: Senator Cherry for Senator Stott Despoja and Senator Conroy for Senator Carr

Participating members: Senators Abetz, Boswell, Buckland, Chapman, Jacinta Collins, Coonan, Denman, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Forshaw, Harradine, Harris, Hutchins, Johnston, Knowles, Lees, Lightfoot, Ludwig, Mason, McGauran, Murphy, Nettle, Payne, Sherry, Watson and Webber.

Senators in attendance: Senators Barnett and George Campbell

Terms of reference for the inquiry:

To inquire into and report on:

1. The effect of government regulation on employment in small business, specifically including the areas of workplace relations, taxation, superannuation, occupational health and safety, local government, planning and tenancy laws.
2. The special needs and circumstances of small business, and the key factors that have an effect on the capacity of small business to employ more people.
3. The extent to which the complexity and duplication of regulation by Commonwealth, state and territory government inhibits growth or performance in the small business factor.
4. Measures that would enhance the capacity of small business to employ more people.

WITNESSES

BANKS, Mr Gary Ronald, Chairman, Productivity Commission 1013

**RIMMER, Dr Stephen John, Assistant Commissioner, Office of Regulation Review, Productivity
Commission 1013**

Committee met at 11.31 a.m.

BANKS, Mr Gary Ronald, Chairman, Productivity Commission

RIMMER, Dr Stephen John, Assistant Commissioner, Office of Regulation Review, Productivity Commission

CHAIR—I welcome officers from the Productivity Commission, including the Office of Regulation Review. I declare open this public hearing of the Senate Employment, Workplace Relations and Education References Committee. On 20 March 2002 the Senate referred to this committee an inquiry into small business employment. The terms of reference broadly focus on two main issues: firstly, the effects of government regulation on the performance of small business, including the complexity of these regulations and the overlap between Commonwealth, state and local government regulations; and, secondly, the special needs and circumstances of the sector, particularly in regard to the capacity of small business to employ more people. Some of these issues were canvassed by this committee in its inquiry into regional unemployment, which was reported late in 1999.

The committee acknowledges the vital importance of small business in the Australian enterprise structure and the need to ensure that the sector has the capacity to grow and to increase the size of the labour market. Of particular interest to the committee is the challenge of transforming successful small businesses into dynamic medium size industries capable of driving economic growth and employment. The committee has received submissions from a wide range of small business interests and is conducting public hearings in most states as well as less formal roundtable discussions with local business people.

Before we commence taking evidence today I wish to state for the record that all witnesses appearing before the committee are protected by parliamentary privilege with respect to the evidence provided. Parliamentary privilege refers to the special rights and immunities attached to the parliament, or its members and others, necessary for the discharge of the parliamentary functions without obstruction and unfair prosecution. Any act by any person which operates to the disadvantage of a witness on account of evidence given before the Senate or any of its committees is treated as a breach of privilege. The committee prefers all evidence to be given in public although the committee will also consider any request for all or part of the evidence to be given in camera. I point out that such evidence may subsequently be made public by order of the Senate. Mr Banks, I invite you to make a brief opening statement.

Mr Banks—Thank you for inviting us to contribute to this inquiry. If convenient I would like to make some brief opening remarks and then proceed to any questions that you might have. I understand that your principal interest on this occasion relates to the burdens which regulations place on small business and how well these are accounted for in the processes for making and reviewing regulations.

There are approximately 100 Commonwealth organisations, national standard setting bodies and ministerial councils with powers to prepare or administer regulations. There is also a multiplicity of state, territory and local government regulatory agencies. Each year these bodies produce thousands of pages of new regulations, to add to the many thousands of pages of existing regulations. Much of that regulation is made because parliaments and regulators see it as improving society's lot in some way. However, most regulation involves costs as well as

benefits, and business inevitably receives its share of both. The key to good regulation making is to ensure that both the benefits and the costs are adequately accounted for in advance, and that policy options which would impose lower costs on business and the wider community are given adequate consideration.

How big are the costs incurred by business? The most recent large-scale survey for Australia was conducted by the OECD in 1998 as part of a comparative international study. The OECD estimated that taxation, employment and environmental regulations together imposed over \$17 billion in direct regulatory compliance costs on small and medium sized enterprises in Australia. On average, each Australian small or medium sized enterprise—and I will use the acronym SME for short—is reported to have incurred costs of \$33,000 in complying with the administrative requirements of regulations in those three areas. This is a surprisingly large number, but it is still somewhat less than the OECD average of \$A36,300.

The OECD report confirmed that the relative compliance burden of regulation is generally greater the smaller the business. Across the 11 OECD countries surveyed, firms with less than 20 employees were reported to have spent approximately \$6,000 per employee, whereas those with 20 to 49 employees spent on average \$2,000 per employee. This reflects the fact that many compliance requirements are fixed or are not closely related to firm size. Moreover, in smaller businesses, regulations are more likely to be dealt with by the prime decision makers rather than being handled by lower level specialist staff. These opportunity costs of diverting managers from their business activities are very hard to evaluate. Like all survey based information on such issues, the OECD's quantitative estimates may have been inflated somewhat by response bias in the survey. Nevertheless, this work does suggest that all governments could do more to reduce costs for business, including small business, by improving the design and administration of regulations.

As you know, over the last decade or so Australian governments have implemented a range of reforms to address concerns about the quality of regulation. In particular, following a report by the Small Business Deregulation Task Force in 1997, the government strengthened the requirements for all new or amended Commonwealth regulations with an impact on business to be accompanied by a regulation impact statement, or RIS. The Office of Regulation Review, which is part of the Productivity Commission, was given a central role in supporting and vetting this process. Previously, in 1995, the Council of Australian Governments had directed the Office of Regulation Review to monitor and report on similar RIS requirements applying to ministerial councils and national standard-setting bodies.

In a sense, the regulation impact statement process does little more than codify the essential elements of good policy making. It requires regulators to identify problems, specify clear objectives and consider a range of feasible regulatory and non-regulatory options. Regulators are also encouraged to consult with the community and stakeholders. The RIS process is intended to improve the quality of regulatory decisions by ensuring that all relevant information is on the table when decisions are actually being made. The Commonwealth's current RIS requirements are outlined in the Office of Regulation Review publication *A Guide to Regulation*, which I would be happy to provide copies of. We have one copy here and we could make some more available.

Similar processes have been progressively introduced by other OECD countries over the last two decades. Indeed, I understand that the OECD developed a RIS template that was originally

based on Australia's own arrangements. In the early 1980s, only two OECD countries had adopted regulatory processes involving such impact statements. But by 2000 this had grown to 20, of which 14 have RIS procedures similar to our own.

In Australia, the Office of Regulation Review is required to advise Commonwealth agencies about the need for and the adequacy of analysis contained in RISs, and whether they comply with the government's regulatory best practice requirements. I should emphasise that it is not the Office of Regulation Review's role to advocate particular policy options or to develop regulations itself. Responsibility for this stays appropriately with decision makers—with ministers, with government departments and with agencies, who are also ultimately responsible for the quality of the regulation impact statements.

Each year about 700 Commonwealth regulatory proposals are brought to the attention of the Office of Regulation Review, of which about 20 per cent require a regulation impact statement. The ORR assesses the quality of each RIS that comes before it against seven criteria. These include a clear articulation of the rationale for the regulation, an assessment of the range of viable options and an assessment of the impacts on different groups, including small business. We have brought with us a selection of regulation impact statements which discuss small business or compliance cost issues. I can leave those with the committee; there are four. The level of analysis required in a RIS depends partly on the magnitude of the problem and the likely impacts of regulatory action by governments.

CHAIR—Mr Banks, are you seeking to table those documents?

Mr Banks—Yes. We will certainly make them available to the committee. If that requires formal tabling I am happy to do that.

CHAIR—It is so ordered.

Mr Banks—Over the last five years as departments and agencies have become more familiar with the process, the Office of Regulation Review has progressively raised the informational hurdle in the regulation impact statement. The ORR requests that all regulators identify the number of small businesses likely to be affected by a regulatory proposal, whether there is likely to be a disproportionate impact on small business, and the likely magnitude of such impacts. In most cases, regulation impact statements provide a qualitative or descriptive assessment of any small business and compliance cost matters. However, increasingly, quantitative estimates of impacts are also being made. In 2001-02, the most recent year, approximately 20 per cent of RISs provided estimates of compliance costs—that is, quantitative estimates.

In relation to compliance costs, the Office of Regulation Review is encouraging regulators to provide estimates of the number and types of businesses affected, the extent of such costs per business and strategies employed to minimise these costs. It might be noted in conclusion that, while the standard of regulation impact statements has generally improved over recent years—and this is documented annually by the Productivity Commission in its publication *Regulation and its review*—in some 12 per cent of cases last year RISs were either found to be inadequate or were not prepared when they should have been. So there is clearly scope to do better. That concludes my opening remarks.

CHAIR—Thank you. Dr Rimmer, do you want to add anything?

Dr Rimmer—No, thank you.

CHAIR—Mr Banks, I have a general question. I note that you refer to the figure of \$30,000. The survey was conducted by the OECD in 1998, which was prior to the new tax changes, so we do not know whether or not those have actually contributed to the additional cost in this area of compliance. That is not the critical issue; I am just making the point that it was done prior to some of those new changes coming in.

Mr Banks—That is true, and it may well be that the OECD will do a follow-up study at some point, which would then be quite useful in assessing what changes may have occurred. As I say, I am not sure how accurate the actual numbers that they come up with would be, because it involves firms saying what costs they incur, and there may be a natural tendency to put it a bit on the higher rather than the lower side.

CHAIR—To inflate it.

Mr Banks—But it would be interesting to see trends over time. It is quite difficult to get information that is consistent over time.

CHAIR—We have conducted a whole series of roundtables with small business all round the country during this inquiry, and we have talked to them about some of these issues. The general view that comes through to us is that compliance is a huge burden on them. We did not discuss it with them in terms of cost. I think they looked at it more from the point of view of the effort involved in their meeting compliance on a whole range of issues—whether it be in terms of employing people, superannuation, occupational health and safety, business activity statements et cetera. The impression was that this is putting an immense additional burden on small business people to the extent that a lot of them said they are being driven out of the front end of the business into the backroom and are being forced to concentrate all their effort on meeting the compliance requirements or, alternatively, they are having to hire accountants to do the work for them at substantial cost. To what extent do the regulation impact statements and the work of the ORR have an impact on reducing the compliance effort that companies have to put in, or is it more focused on the quality of how compliance is conducted?

Mr Banks—As I indicated, a number of the things that the Office of Regulation Review looks at relate to compliance burdens, which are a subset of the costs of regulation generally. Agencies are required to put forward a number of options for any regulatory objective that they may be seeking to meet. One way of looking at those options is in terms of compliance burden. Clearly, if two options were going to be equally effective in terms of the objective but one involved a higher compliance burden or cost then the Office of Regulation Review would be wondering why that one would be chosen over another. At that level there is an opportunity to scrutinise that. Typically, as I said, the sort of information that comes through is, in most cases, qualitative or descriptive—so it might say that this regulation would involve small business in completing certain requirements, certain forms or whatever but not hazarding a guess at what the cost would be.

Increasingly, the Office of Regulation Review has been pushing agencies to try to quantify the cost because it is easy to dismiss something that does not have a number on it. The

discipline of trying to put a number on it would force agencies to go and talk to small business and get a sense from them, as you have, as to what is actually involved. If they asked how much time business spends in the backroom they could gather some information. Over time we are trying to crank up the requirements to force agencies to be more precise—rather than saying in general terms that there would be some minor additional burden—and talk more to small business to find out. The opportunity exists and over time we have been, in a sense, tightening the requirements to ensure that is taken seriously.

CHAIR—How does your role and responsibilities differ from the role and responsibilities of the Office of Small Business?

Mr Banks—This is something that Stephen may want to comment on. The Office of Regulation Review's primary role is one of assisting departments in the preparation of RISs, of vetting the quality of RISs and then, ultimately, reporting annually on that through the commission. We also do some reporting against indicators that the Office of Small Business delivers separately. There is no regulatory or policy dimension to our work other than that sort of procedural vetting role that we have. I might ask Stephen to elaborate on that.

Dr Rimmer—The regulation impact statement essentially documents the policy development process and seeks to identify a range of impacts that may derive from various policy options. While the trigger to prepare the RIS is impact on business, once that trigger has been set the RIS should look at the impacts—environmental, social and economic issues. It does have that very broad perspective. The Office of Small Business, of course, tends to have a more narrow focus, which is small business issues. Perhaps the other key distinguishing feature is that we are very much at the policy end whereas the Office of Small Business clearly has an interest in policy issues but is also, in many cases, involved in the actual application of regulations and how regulators interpret and apply regulations. That is also very important; it is not just a matter of getting the policy right, if you like, but ensuring that regulators are interpreting and applying the policy in a way that achieves objectives but minimises any burdens on business and the community more broadly.

CHAIR—We had a number of criticisms raised of the RIS process by ACCI in their submission which I would ask you to respond to. There are four of them. I will give you them one at a time to make it easier. Firstly, they said that RIS completion is not yet to an acceptable standard of robustness or effectiveness.

Mr Banks—I suppose robustness is in the eye of the beholder to some extent. It is certainly true that over time when these arrangements were relatively new the Office of Regulation Review was perhaps a little more lenient in terms of the threshold that was set as agencies were coming to terms with all the new requirements.

I would not say that that was true any more. I think that the disciplines are quite significant. Nevertheless, as I indicated, in the past year some 12 per cent of RISs failed the adequacy requirement set by the Office of Regulation Review. It could be that the ACCI still feels that what the Office of Regulation Review considers to be adequate is not actually adequate from their point of view. But I guess our perspective on this is a fairly objective and disinterested one—it is just looking at the quality of the analysis. Sometimes, if industry does not like the regulation itself, it will feel that the regulation impact statement must have been faulty. We are not so much assessing the policy decision as the process. We have a fairly objective way of

appraising that, involving a number of adequacy criteria. Stephen might like to elaborate on that.

Dr Rimmer—The office uses seven criteria to assess the quality of RISs. A RIS must pass all seven tests to be considered adequate. Briefly, the criteria we use are: a clear articulation of a problem; a clear objective for government action; a range of feasible options, both regulatory and—where feasible—non-regulatory; an assessment of impacts of each of those options on the community; a description of consultation that has been undertaken with the community and stakeholders; a statement of the preferred option; and a statement of implementation issues. As my chairman has indicated, we have raised the hurdle over the years.

The RIS itself brings into the public debate a range of new information which would not be available in the absence of a RIS. That information includes the various options that have been seriously considered and looked at, and an articulation by the regulator or the decision maker as to what is the preferred option. All of this information is new and sheds quite a lot of light both on the policy development process and the thinking behind decisions which governments make in relation to regulation.

CHAIR—Perhaps we can take the other three criticisms together, as I think they are interrelated. One criticism was that RISs should include an assessment of the impacts of proposed regulation and alternatives on different groups in the community as a whole. Another criticism was that 11 departments and agencies were identified as having produced inadequate RISs in the 2000-01 review, indicating the need for more education. The final point, which I think is probably at the heart of their criticism, is the need to address a mentality within certain departments and agencies that RISs can be used as a means of justifying regulation as opposed to the original intention—they are validating the need for regulation.

Mr Banks—I might start with the last criticism first, because that is a really important point. It is something that the commission has identified in its regulation and review report each year: there has been a very important need for a cultural change within agencies, from precisely what the ACCI describes as an attitude of, ‘This is the decision; how do we justify it?’ to one in which the options are assessed early enough to allow the decision makers to make a decision with all the facts before them.

I would say that that cultural change is occurring and that it is reflected in the improved rate of adequacy—if I can put it that way—of the regulation impact statements that come before us. In the last year, the adequacy rate has increased from 82 per cent to 88 per cent of RISs that have come before the Office of Regulation Review—that is, those that are at the decision making stage. Even so, there is room for improvement. I suspect that, in *Regulation and its review* this year, we will be talking about timeliness and the importance of this being done sooner rather than later.

On many occasions, the Office of Regulation Review will get a phone call saying: ‘A cabinet submission might be going forward in a couple of days. Here’s the RIS. What do you think?’ and there is just not enough time. One of the things that Stephen and his colleagues have been doing when they are giving training to agency officials is to make sure that they are bringing things to our attention early. One systemic way of ensuring that is to have an official who is designated as the person and the linkman to do that. That has now generally happened and things have been improving.

In terms of impacts on others, as Stephen indicated, that is one of the core criteria for judging whether a RIS has passed or not. If a RIS came forward on an issue that was clearly a small business issue and made no reference to the impacts on small business, that RIS would fail. The only other point I would make is that the final failure rate is often a lot lower than the failure rate would be if we had to judge RISs on the basis of the first draft that comes over to the Office of Regulation Review. It is important that they come to us quite early because the feedback that they get from Stephen and his colleagues will often transform the quality of the regulation impact statement. For example, if they have neglected to look at small business sufficiently in the first draft, by the second or third draft that may have been remedied and finally the regulation impact statement may pass.

Dr Rimmer—In terms of non-compliance, each year certain departments and agencies do not comply, but it is a bit of a moving feast—an agency that has not complied one year will perhaps comply the next. We have to be fairly quick on our feet in terms of focusing on those that are struggling with RISs.

We basically have three strategies that we can employ. Firstly, in addition to providing advice on the content of the RIS, we can approach the Parliamentary Secretary to the Treasurer and alert him to any particular problem areas. Secondly, we can provide training and targeted assistance. Thirdly, our reporting process through *Regulation and its review* identifies departments that have not complied fully with the requirements. That, I suppose, adds a degree of transparency as to those areas of government that may be struggling with the requirement. Nevertheless, the hurdle is being raised and compliance continues to improve, so I think we are making strides. There is a fair way to go, but we have made significant strides in recent years.

CHAIR—We have heard that the quality of RISs could be improved if there was a regular mandatory post-implementation review of the accuracy of the estimates of the compliance burden. Would you like to comment on that? How practical is that approach?

Mr Banks—I feel that there should be more monitoring of regulatory change and policy change generally. Quite often policies are devised and developed, but you can never be 100 per cent sure about all their impacts and how they will work. I think it is a good thing to review policies and regulations over time. Compliance cost dimensions are a very important part of such a review. In practical terms, it would be very costly to try to do that systematically for every regulation that was passed, so there would be a need to focus that to some extent.

CHAIR—Could you do it as a snapshot?

Mr Banks—Again, it would need to be based on survey type information. When you say ‘a snapshot’, do you mean a snapshot across all regulation?

CHAIR—Yes, rather than trying to do it with every regulation. You could take periodic snapshots, on a random basis, of regulations and do an assessment of them. Is that a role that the Auditor-General could perform, for example?

Mr Banks—Who should perform that role is a question. The Auditor-General could look at those dimensions. The point I was making earlier about the OECD’s work is that it would be quite useful to have that aggregate information over time and we do not have that. At one level you could simply be doing surveys, which the ACCI itself does, and getting a sense of whether

things are getting better or worse over time. Otherwise, I think you would probably come back to reviewing very significant bits of regulation to see how they have been regulated. A superficial attempt to get a sense of the compliance costs in reality might not be sufficient and it may require a more detailed assessment of regulations.

Dr Rimmer—Certainly a lot of the heat, in terms of concerns about regulations, comes more from how it is implemented rather than the policy side. The RIS is very much targeted at the policy end. That is a real issue and business and other groups continue to express concerns about it. It does raise a systemic issue about mechanisms which could perhaps better address those concerns. The Auditor-General is certainly one person that could look at those sorts of issues.

Mr Banks—From time to time my organisation, the commission, has conducted reviews where compliance cost issues have arisen. It would be part of a much more wide-ranging review on some aspect of environmental or social or other regulation where that would be brought out. It has the advantage when you do it that way that you can put the compliance costs in the context of the benefits from the regulation. One of the problems with just focusing on the costs of regulation is that you lose sight of the benefits. As I indicated, most regulations are there because they are designed to achieve some useful purpose. A certain amount of compliance cost is inevitable; you cannot avoid it. The question is: how do you most effectively minimise it without jeopardising the objective of the regulation itself? That is why, to some extent, while you can have these surveys of the aggregate compliance costs, every now and again you need to burrow down and look at some particular significant part of a regulation and see what is actually happening on the ground. I think there is scope to be continually doing that and choosing appropriate areas of regulation to focus on.

CHAIR—The important point is the point that Dr Rimmer made. It is not the policy end that is the issue; it is the application that really worries the small business people. That is where all the complaints are. It is the work involved in meeting the compliance. It is not the policy of the RIS, so to speak; it is the other end. I agree with you that in many areas these compliance requirements are necessary. They are essential for the protection of the community—for occupational health and safety, for example. In some cases—for example, the new tax system—a major part of the compliance burden appears to result from the administrative arrangements for implementation of the regulations: for example, the forms to sign, details of reporting requirements, adequate use of plain English in laws or information, and adequate information. To what extent are the detailed administrative arrangements considered as part of the RIS process?

Mr Banks—That is something I might ask Stephen to comment on.

Dr Rimmer—One of the sections of the RIS does deal with implementation issues relating to the preferred option. So there is some discussion, although typically, because it is still at the policy end, it tends to focus on fairly broad strategic issues: who would implement the regulation, whether there are any potential fiscal costs, and some information perhaps about how the regulation would be implemented. But that focus is typically fairly broad rather than really drilling down into the mechanics of how many forms there are et cetera.

CHAIR—Did you look at the RIS for the new taxation system?

Dr Rimmer—Yes, that was one of the RISs that my office considered.

CHAIR—Were these issues considered when you looked at it? Were there any lessons that you learned out of that process of implementation of the new tax system?

Dr Rimmer—The RIS in question, dealing with the tax system, was a little bit unusual for perhaps two reasons. One is that the RISs for tax are a little bit different to RISs for other issues. The tax RIS is a little bit more focused. It does not address the policy question of the proposal but looks at implementation options, so it is a more narrowly focused assessment. I suppose the other key feature of that particular RIS was that it was really looking very broadly and very strategically at a very complex systemic change to the tax system and, as a consequence, it took a fairly broad strategic overview. There are a number of follow-up changes to the tax system which have also required more specific and focused RISs that looked at particular issues or aspects of the tax reform program.

CHAIR—The reason I ask, Dr Rimmer, is that there have been very significant differences between what the Taxation Office, for example, has said the cost of implementation of the new tax system has been and what small business has said the cost of implementing the new tax system has been to them. There have been pretty wide and varied figures given. I wonder to what extent these were identified in the RIS that was produced for the new tax system and what lessons might have been learnt from that process by your office, for example, in how you more accurately measure these impacts. For example, what work did the tax office really do to get a hard assessment of what the cost is actually going to be, or was it just a judgment by someone with a calculator, saying, ‘Oh, we think that is probably going to cost them \$200; here is a cheque for \$200 and that will solve your problem’?

Dr Rimmer—The measurement of compliance cost is quite complex. One of the challenges in this area is that different people use different criteria to measure such costs. Often, the estimates of compliance costs will reflect differences in the methodology underpinning the assessment. In any particular issue, you will typically get a range of different estimates which will be based on different types of information or different approaches. The approach that my office takes is to encourage the regulator to identify those different estimates, acknowledge them and perhaps articulate why there is some variation in the estimates.

Mr Banks—I come back to the point I was making earlier that, with the best will in the world, it is not always possible to accurately predict or forecast what these costs might be. Consultation is a critical issue in regulation development, for the reasons we have just been talking about. It helps identify at the pointy end what the businesses think is going to be involved. I guess it is critical, though, that over time there is opportunity to self-correct, to take on board that feedback and to improve regulation.

CHAIR—I must say it is still a big issue for lots of businesses we talked to—the whole question of compliance, doing the BAS and having to have them in by a certain date, and the whole issue around tax and the fact that people see themselves as tax collectors for the government. But that is another issue entirely. It does not fall within the purview of your organisation.

Mr Banks—I should say that the OECD survey, of which you have a copy, identifies this as being an issue internationally. Right across all OECD countries, firms identify tax regulation as their prime bugbear. So Australians are not unique in that respect.

CHAIR—I suppose that is true. A number of the small business representatives who have appeared in front of us have complained about the inadequate consultation and the information that has been given to them on the new privacy legislation which will come into effect for certain small businesses in December. Has your organisation reviewed the RIS for the Privacy Act?

Dr Rimmer—The Office of Regulation Review reviews all RISs that are prepared by regulators.

CHAIR—Have any of these concerns come to your attention? It was a pretty widespread complaint.

Dr Rimmer—I would have to have a good look at the RIS before providing informed feedback to you.

CHAIR—Could you take that on notice?

Dr Rimmer—Yes, certainly.

CHAIR—I am conscious of the time that we have and I want to give Senator Barnett some opportunity to ask some questions too, but there is one issue that I wanted to get your view on. That is in relation to what might be a practical approach to dealing with this regulatory reform issue. Maybe you could argue that what I am about to suggest is what your organisation is. Given that we have three tiers of government, three jurisdictions, that are passing regulations in the area of small business and business generally, to what extent is there a capacity—you talk about your involvement through COAG with ministerial councils and so forth—to take a whole-of-government approach to this regulation issue and to look at the establishment of a council similar to the National Competition Council or a national regulatory council, some form of organisation, to look at these issues across all of government to identify where there is duplication of regulation, where there is unnecessary burdens being added because a business is doing everything in triplicate rather than being able to do it through one avenue, for example, and where there is a capacity to separate out responsibility between the various levels of government for certain regulations so that it is clearly understood where the responsibilities lie?

An example that has been raised with us is the different regulations that are being passed by local councils which impact within the boundaries of metropolitan areas. In Perth, for example, we heard about some regulations introduced by local councils that were impacting on small business. In this instance, the requirements to run a business that operated on one side of the street under one council were different from those required for a business that operated on the other side of the street under a different council. I am referring to issues such as those. Is an issue of this character, involved in dealing with this whole question of regulation, worth while looking at?

Mr Banks—I think it certainly is. Finding ways of coordinating regulation, as you put it, in a whole-of-government way is a real challenge. It does happen in various ways. I might ask Stephen to outline the range of mechanisms that currently exist.

Dr Rimmer—In addition to the RIS requirements that apply to ministerial councils and national standard-setting bodies—the intergovernmental decision-making forums—there are some other mechanisms in place which are designed to address the issue that you have raised. At the officials' level, for example, there is a Committee on Regulatory Reform, which seeks to address on an ad hoc basis any particular issues that arise where there are concerns about inconsistencies or problems between jurisdictions. There is also a range of ways in which governments can approach this problem, which is characterised in a lot of federal systems. One example would be the mutual recognition agreement which applies in Australia where jurisdictions agree to recognise each other's regulations that pertain to goods and registered occupations. There are some systems in place. Looking at the proposal you put forward, it is a matter of looking at the effectiveness of what is there and what other options there are to enhance the effectiveness of intergovernmental arrangements.

Mr Banks—It is really critical, as Stephen was indicating, where you get into jurisdictional effects. The principle of subsidiarity, that local government should have responsibility for regulations impacting on that local area that are not wider in application, is quite a good one and it makes things more manageable. So it really comes down to those issues that within a state jurisdiction spill over between local government areas. Planning is a classic, and in some cases it has been taken over through state legislation imposing almost template requirements on local jurisdictions. I think another one is between states. There we have a number of areas. As Stephen indicated, there is the Committee on Regulatory Review, which has senior officials from all governments looking at particular areas of regulation that are more national or interjurisdictional in their spread or breadth.

There is probably no single forum or opportunity that could be all encompassing in terms of regulation. It is a matter of trying to find ways of creating forums that pick up the regulations that relate to, as I say, either Australia as a whole or particular jurisdictions. Experience is mixed around the country on the regulation impact statement processes. The Commonwealth, possibly from being behind some states to begin with, is now probably leading in a number of respects in the systems in place. But different state jurisdictions are also evolving in how they deal with the regulation review process. I think we are seeing improvements in processes over time, but I can understand from the point of view of an individual businessman that this may seem to be not helping them with the particular problems that they may be facing right now.

CHAIR—Is it within your purview, Mr Banks or Dr Rimmer, to give us a description of the various bodies you are aware of that exist within your structures that are dealing with these questions of regulation? It would be worth while us having a look to see what is in place and whether there is a capacity to rationalise it or whether there are gaps that need to be filled in.

Mr Banks—We would be happy to do that, and I think the Office of Regulation Review is probably well placed to do it. We might even be able to provide some international information for you as to how other countries try to grapple with this, because we have had a research project over the last six months which has been doing precisely that. We will put together what we can and make it available to this committee. Within what period of time would you be seeking this?

CHAIR—We have got to table this report by 19 November.

Mr Banks—So within the next week or two.

CHAIR—That would be fine. If you have got any views or ideas that you think might help improve or streamline the process, I am quite happy to take them on board also.

Mr Banks—What we could do, too, is perhaps point you to views that have been expressed formally through annual reports and *Regulation and its review* and so on, and bring those together so you can see what suggestions we as an organisation have made to help.

CHAIR—We are struggling to come up with some answers in this area. It is very difficult. There is an expectation by small businesses out there that we ought to be able to wipe it all out and let them get on with making a quid.

Mr Banks—Produce the silver bullet.

CHAIR—That is right. It is not as simple as that, unfortunately.

Senator BARNETT—Thank you for your submission and the opening comments, which are valuable to us in terms of developing our views and recommendations for our report. There is a lot of good information there, which is appreciated. I would like to consider that last point first. I think it is extremely important. The chair has asked a number of questions which cover some of the issues that I am interested in as well. Regarding that last point, we have got a federation of states in this country and we have got three levels of government, and they are all trying to do the right thing in terms of representing the public interest, and there is an overlap. We had a submission from Tasmania which said that there were over 20 separate licences, permits and approvals regulating the establishment of a petrol station and general store. Amongst those 20, there were federal, state and local government requirements—I think they were primarily state and local government. This is the point that the chair has just made.

Is there some way that we can establish a national body—or is there some entity that can be used—to cross out this duplication of regulation and paperwork that is imposed on small business? The compliance cost is just too much. You cannot expect a small business of fewer than five employees to be going out and searching for these 20-odd permits and approvals to establish their store. It is simply unacceptable. They will be forced to act in breach of these different laws and permits, and it is incumbent on us as legislators—the three levels of government—to do better. I take the view that as a federal government we should be driving the agenda in terms of the different levels of government to say, ‘Listen, we’ve got to protect the interests of small businesses so that they can employ more people.’ I am just emphasising the chair’s point about finding a mechanism to do it better. I know you take the view that you are not implementing policy but taking a regulatory review approach, but we would be very interested in your views on how we can do it better. We have got a system here that we think can be improved, and that is our job. Do you think you can help us to develop an overarching system, council or entity to draw down and drive this agenda, whether it is your entity or some other entity?

Mr Banks—Let me respond. I had a couple of thoughts as you were talking of things that have been done or things that could be done. If you think to some extent of these different levels

of government and that it is appropriate that the different levels of government make certain sorts of regulations that pertain to their jurisdictions, then I think, on the general question of process, of getting good process, such as we have described and our regulators try to achieve right through the country at all levels, there is no reason why at local government level when they are looking at planning regulations they should not go through exactly the same kind of regulation impact statement process. Some of them do, but I suspect that the performance is very variable on that. That is good process in terms of making regulation, wherever it may be. Then there is an issue of coordination so that you are not getting, in this one country where we are trying to create one market, one jurisdiction tripping up another or confusing businesses when they go from one place to another. We indicated that there are various ways you can deal with that across states, and I think mutual recognition has been a really important initiative in that respect, and it goes across the Tasman as well. That has been a real plus.

Within states, a really major initiative, and one that has been quite contentious, has been the amalgamation of local government areas into larger jurisdictions. One of the great advantages, apart from the administrative apparatus being less burdensome on ratepayers, is that they have been able to amalgamate a lot of regulation and make it more consistent so where you may have had a multiplicity you can reduce that to maybe a 10th of the firms that might be operating across different local government areas. That has been quite good. We could look at it. I am not conscious of how much work has been done in assessing that side of it. There has been a lot of discussion of the budgetary savings.

Senator BARNETT—Can I just focus on local government—

CHAIR—There are a lot of good examples of good councils that have arisen out of that process. Monash in Victoria is a very good example of where they have actually used the resources they have saved in a proactive way and are assisting business, but there are also some very bad examples. That is the unfortunate nature of local government.

Mr Banks—Yes.

CHAIR—Sorry, Senator Barnett.

Senator BARNETT—I was just picking up on that point. In some states, model local government by-laws are developed by the state governments and then thrown over to local governments by the states, who say, ‘Look, consider this.’ But can you help develop best practice in terms of ‘These are the types of model by-laws’ or is that out of your purview?

Mr Banks—The commission or its predecessors have looked at issues to do with land planning and regulation arrangements. From time to time there are requests that go forward to government to get the commission to look at this at a more micro level across different jurisdictions. It would be a matter of choosing development applications—in fact we regard that as an important area—and it would be quite feasible for my organisation to do a public inquiry in an area like that and come up with what we think is best practice on the basis of what we observe across the country, drawing on the point that Senator Campbell made that performance is quite variable. So we would be quite happy to proceed in an area like that. It would be hard for us to just decide to do it by ourselves. It would be something that the government—

Senator BARNETT—That is understood, and these are the recommendations that we will consider in our report. But if you can think you or this new entity or some entity can drive the best practice models at local, state and federal government levels then we would be interested in your comments. Queensland, for example, have the Red Tape Reduction Task Force and that apparently is quite effective. I do not know if you have views on whether that type of entity and that type of operation should be operating in every state or whether we should be establishing some sort of national council with the three tiers of government on it to drive home these regulation and reduction mechanisms. Do you have a view on that?

Mr Banks—The one you mentioned I think is a good example of what can be achieved. Stephen may carry in his head some numbers about what that reduction task force has achieved, but I cannot see why that could not be emulated in all jurisdictions and probably it is something that is most appropriately done within each individual jurisdiction.

Senator BARNETT—Have you recommended that or would you support that approach?

Mr Banks—Yes, and I think there would be a lot of people within different jurisdictions and probably within other governments who would support it. There may be examples where a similar type of process has already happened in other jurisdictions.

Dr Rimmer—The Queensland approach is a little unusual in that it has a whole-of-government purview and it does, from our observations, appear to be doing quite a bit in addressing regulatory issues within Queensland. I am not aware of any similar approach taken in other jurisdictions.

Senator BARNETT—I think it was Tom Peters, the management guru, who said that, if you cannot measure it, it is not worth doing. What about compiling a matrix of all states and territories where you or some other entity says, ‘You have to be accountable for your regulation review efforts and your compliance costs on small business,’ because they are the ones that are building the economy in this country? Could we develop a matrix of performance indicators or standards? I know that you have got performance indicator reviews in your report and the OSB report for Commonwealth agencies. Why don’t we drill that down and use that approach for states and local governments and have a matrix showing how well they have done and the key performance indicators in the different areas? Do you have a view as to whether we could do that?

Mr Banks—I would like to think of the commission as a resource for all governments, but they may feel that is stepping over the line. We certainly have authority to do that in the Commonwealth domain, and Stephen Rimmer and his team work very hard to build links with equivalent bodies in the different jurisdictions. They meet once a year to swap experiences and so on. Through a public inquiry there is always the opportunity for us to investigate and make recommendations to all governments, but the step that you are envisaging would just go too far in what this organisation could do.

Senator BARNETT—That is a recommendation that we can consider in the report. Thank you for your OECD report analysis. I understand that we have that. I have not reviewed it. Do you know when the next review will be?

Dr Rimmer—I am not aware of any proposal to follow up the work undertaken for that study. It did involve 11 countries and several thousand businesses.

Senator BARNETT—But you understand that it is ongoing and there will be another review at some stage?

Mr Banks—I would like to think so. My point was that you get these ad hoc reviews being done, but you cannot always rely on the numbers they provide. It would be nice to have the same consistent methodology over time. Even if the numbers in a particular time were not accurate, you would have a sense of the trend. I think the Australian government should be asking the OECD to repeat the exercise every four or five years or something like that.

Senator BARNETT—That is exactly the point. I think it is extremely valuable. I know they are ballpark figures and they are estimates, but they are extremely valuable. Why don't we do it ourselves?

Mr Banks—An international comparison?

Senator BARNETT—No, forget international—do our own review of the cost of compliance and regulation in this country.

Mr Banks—We certainly could. Currently, as I have said, it is done but in rather an ad hoc way.

Senator BARNETT—Could you do it?

Mr Banks—Again, if we were asked to do that, we would certainly respond. We have a track record of being able to look at these things and use our processes in that way.

Senator BARNETT—This goes to the philosophy of measuring progress and the cost of compliance. I am just seeking your response. I think it is something worthy of serious consideration.

Mr Banks—It is, and I think to have something systematic over time nationally as well as internationally would be a good thing.

Senator BARNETT—I make the point that the OECD report, according to your introductory remarks, covers small businesses with less than 20 employees and of course we have over 80 per cent of small business that are microbusinesses of five or less. I do not know whether there is any analysis in that report or that you might have done of the compliance costs of microbusinesses.

Dr Rimmer—The OECD report looked at small or medium enterprises with less than 500 employees, but they broke the category up into small business which they classified as having under 20 employees and they did not disaggregate further to, say, below five.

CHAIR—The experience we have had in this inquiry so far is that there is a need to disaggregate our small business community further than businesses with fewer than 20

employees. Something like 66 per cent of all small businesses are home based businesses, so there is a very distinct weighting against the bottom end as against businesses with 20 employees. It has been put to us that there is a need to look at the life of small businesses—that is, businesses that have been operating for two years or for between two and four years—because there are distinct life cycles in small business that you also need to take into account in measuring some of these issues.

Senator BARNETT—The chair asked a question about the mandatory post-implementation review of regulatory impact statements. You answered it, but I could not quite work out whether or not you supported it or whether or not you thought it was a good idea. I think it is a good idea and small business witnesses have put it to us as a good idea. Can you clarify your response to that?

Mr Banks—I was probably thinking on the run. My response was that it is a good idea in principle but what would it involve in practice? It would depend on what those reviews were doing and therefore on whether you might want to focus more on priority areas, where the potential costs might loom a lot larger, and burrow down into them in more detail to get a sense of how the costs compare to the benefits, because you need to keep both sides of the equation in mind.

Senator BARNETT—But it could be done?

Mr Banks—Yes. An important issue in regulatory design and process is the whole question of the sunset regulation. There have been proposals before the parliament to consider that. Some jurisdictions do have mandatory sunset provisions. That means that, unless the regulation is refreshed and comes back to the parliament with a new regulation impact statement, it stops. I suspect that makes more work for officials, so you are balancing then the cost to government versus the cost to business, but it is another important opportunity to, in a systemic way, make sure that things are being reviewed every five years.

Senator BARNETT—Thank you.

CHAIR—We have to conclude there, as we have been given only an hour by the Senate. Thank you very much to both of you for your contribution. Thanks for taking on board those tasks that we asked you to. We might burden you a little further. If there are other issues we want to follow up, can we put those questions on notice to you and ask you to respond to them?

Mr Banks—Please do.

CHAIR—We will try to keep them to a minimum, obviously.

Mr Banks—We will try to get back to you as soon as we can. We know that you have a deadline. We will certainly get that information back to you on the coordination mechanisms.

CHAIR—Terrific. Thank you.

Committee adjourned at 12.32 p.m.